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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,350	03/16/2004	Mark S. Nichols	7522-8	2106
30448	7590	10/06/2006	EXAMINER	
AKERMAN SENTERFITT			ROWAN, KURT C	
P.O. BOX 3188			ART UNIT	PAPER NUMBER
WEST PALM BEACH, FL 33402-3188			3643	

DATE MAILED: 10/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/801,350

Applicant(s)

NICHOLS, MARK S.

Examiner

Kurt Rowan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6, 10-15, 17-23, 27-29 and 31-35 is/are pending in the application.
- 4a) Of the above claim(s) 31-35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 17-29 is/are rejected.
- 7) ☐ Claim(s) 7-9 and 24-26 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-6, 10, 11, 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hurtle, Jr. (US 2002/0078619) in view of Spelts (US 4,843,754) and McClellan (US 5,220,743).

The patents to Hurtle, Spelts, and McClellan show fishing lures. Hurtle shows a body 14, 15 having at least one cavity 18 in a midsection of the body and at least one opening 32 in a top surface of the body. Hurtle shows a hook 20 having a weight 24 coupled to the hook along a shank 28 of the hook such that the hook is positioned closer to the line receiving portion 22 of the hook wherein the hook is positioned in the at least one cavity such that at least a portion of the weight contacts inner surfaces of the cavity thereby resisting the hook from being pulled from the body when the hook is pulled. Hurtle shows a shank receiving cavity (not labeled) where the shank passes through the front of the body as shown in Fig. 1. The shank receiving cavity extends from the cavity containing the weight 24 and the nose of the body at eye hole 23. The patent to Spelts shows a weighted lure having a body 21 with a cavity (not shown but see Figs. 1-2) with an inner wall in the midsection of the body having a portion that is generally orthogonal to the shank containing region that prevents the weight from being pulled

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though the shank containing region. Spelts shows the base 17 as the leading edge of the weight 16 attached to the hook generally orthogonal to the shank as shown in Fig. 1. Spelts shows the leading edge of the weight contacting the portion of the cavity that is generally orthogonal to the shank containing region as in Fig. 1 to prevent the hook from being pulled through the shank containing region as disclosed in column 4, lines 10-16. The patent to McClellan shows a fishing lure having a weight 35 mounted on a fishing hook closer to the throat of the hook than the line receiving portion 28 of the hook. In reference to claim 1, it would have been obvious to provide Hurtle with an inner wall in the midsection of the body as shown by Spelts having a portion that is generally orthogonal to the shank containing region for the purpose of retaining the weight from being pulled through the shank containing region as disclosed by Spelts. The combination of Hurtle as modified by Spelts, and McClellan does not show the midpoint of the weight positioned at a mid-section of the body, but it would have been obvious to position the midpoint of the weight at a mid-section of the body to change the action of the lure in the water and since the change in location of parts is obvious. See *In re Japikse*, 86 USPQ 70. The patent to Spelts shows a fishing lure having a body saving device as the flat surface 17 of the weight 16. In reference to claim 3, McClellan shows at least a portion of the weight 35 coupled to a bend 30 in the hook as shown in Fig. 6. In reference to claim 4, McClellan shows the weight further comprising a base 41. In reference to claim 5, the base 41 shown by McClellan extends the entire length of the weight. In reference to claim 6, it would have been obvious to provide the fishing lure of Hurtle as modified by McClellan with a body saving device such as the

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edge of the base 17 which as shown by Spelts which acts to retain the soft plastic fishing lure 21 to the body. In reference to claim 10, McClellan discloses lead 19 in column 3, line 40. In reference to claim 11, Hurtle discloses a weight with a base aligned generally with the shank of the hook that extends wider than a width of the hook. In reference to claim 14, Hurtle shows at least one cavity including a weight containing region and a shank containing region extending from the weight containing region toward a nose of the body and sized to allow a shank of the hook to inserted into the shank containing region but to restrict the weight from being inserted into the shank containing region. In reference to claim 15, Hurtle shows an eye 22 protruding from or through a leading surface of the body

3. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hurtle in view of Spelts, and McClellan as applied to claim 1 above, and further in view of Huppert.

The patents to Hurtle, Jr., Spelts, and McClellan show fishing lures as discussed above, but do not show a plurality of ribs extending around the body. The patent to Huppert shows a fishing lure having a plurality of ribs 61 extending around the body in Fig. 5. In reference to claim 13, it would have been obvious to provide the lure of Hurtle as modified by Spelts, and McClellan with a plurality of ribs as shown by Huppert to resemble a target species.

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4. Claims 12, 17-22, 23, 27, 28, 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hurtle, Jr. in view of Spelts, and McClellan as applied to claim 1 above, and further in view of Admitted Prior Art.

The patents to Hurtle, Spelts, and McClellan show fishing lures and have been discussed above. This combination shows a head and a tail, but not a plurality of legs extending from the head which is shown in Figs. 1-2 of the instant application as "Prior Art". In reference to claims 12, 17, it would have been obvious to provide the lure of Hurtle as modified by Spelts, and McClellan with a plurality of legs as shown by the Admitted Prior Art of Figs. 1-2 for the purpose of making the lure resemble a shrimp which is a desired prey species. In reference to claim 18, Hurtle shows the bottom aspects of the weight are substantially enclosed by the body. In reference to claim 19, Hurtle shows an opening 32 in a top surface of the body in communication with the at least one cavity 18 as shown in Fig. 1. In reference to claim 20, McClellan shows the weight 35 in communication or coupled with a bend 30 of the hook as shown in Fig. 6. In reference to claim 21, McClellan shows a base 41 coupled to the weight 35. In reference to claim 22, McClellan shows the base extending the entire width of the weight and the base has a width equal to the other portions of the weight, but it would have been obvious to employ a base having a wider width to increase the stability of the lure noting that changes in shape are obvious. See *In re Dailey et al.*, 149 USPQ 47. In reference to claim 23, Spelts shows a body saving device as the flat surface of the base to retain the soft plastic lure on the body. In reference to claim 27, McClellan discloses a lead weight.

***Allowable Subject Matter***

5. Claims 7-9, 24-26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

6. Applicant's arguments with respect to claims 1-6, 10-15, 17-23, 27-29 have been considered but are moot in view of the new ground(s) of rejection. Applicant's response overcomes the examiner's objection to the specification. Applicant's arguments with respect to Hurtle and McClellan have been noted, but the newly cited reference to Spelts shows the lacking features in Hurtle and McClellan as to the leading edge of the weight attached to the hook is generally orthogonal to the shank and the leading edge of the weight contacts the portion of the cavity that is generally orthogonal to the shank containing region to prevent the hook from being pulled through the shank containing region of the body. With the trend toward weedless hooks, the proposed combination contemplates making the lure weedless such as shown by Spelts who retains the hook point and barb within the lure body as shown in Fig. 2 until a fish strikes as disclosed in column 2, lines 52-57.

***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is (571) 272-6893. The examiner can normally be reached on Monday-Thursday 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Kurt Rowan", with a large checkmark-like flourish at the end.

Kurt Rowan  
Primary Examiner  
Art Unit 3643

KR